the order than by refusing to grant it lies upon the tenant: *Sims* v. *Wilson.*[12] The test is hardship and not mere inconvenience: *Maguire* v. *Stewart* [13] (cited by Magarry at page 264 of the 9th Edition). It is clear that the defendant at one time was using the premises both for business and as a residence. He has moved his business as manufacturer of Chinese tobacco and cigarettes to No. 46-C, Jalan Lima, Chan Sow Lin Road, so that the premises at present are used for purely residential purpose. When the premises were first built, I have no doubt they were more suitable as dwelling premises. With the expansion of Kuala Lumpur Town, they now come within an area which to my mind is essentially a business area. A big European firm dealing in motor cars is carrying on business in the neighbourhood. I think it will be correct to say that it is more difficult to find business premises than to find premises for residential purposes.

What the Court has to do is to balance the hardship which the plaintiffs will suffer by being kept out of the premises against the hardship which the defendant will suffer if he is deprived of the use of the premises for residential purposes. I am satisfied in my own mind that it would be more difficult for the plaintiffs to find business premises than for the defendant to find premises for residential purposes. It is clear that the defendant has taken no steps whatsoever to find accommodation elsewhere. He is by no means a poor man and I cannot believe that it would be difficult for him either to build a house of his own or to rent a house for himself and his family near his business premises. In fact there was evidence that there is a wooden house at the back of the factory which it might be convenient for the defendant to obtain on rent.

It has been urged by Mr. Peddie on behalf of the defendant, on the authority of *Nevill* v. *Hardy,*[14] that the onus of proving suitable alternative accommodation for the tenant is on the landlord, but that I think is the case where the plaintiffs claim possession under paragraph (n) of Section 12(1) of the Control of Rent Ordinance, 1956. When the claim is made under paragraph (f) as in the present case, the sole question is one of hardship and what the Court is required to do is to weigh the respective merits in the case for each party. In his judgment in the Court of Appeal in the case of *the Perak Hauliers Ltd.* v. *The Cycle & Carriage Co. Ltd.*[15] Ong J., said:

"As to the availability of 'other accommodation' I would observe that those words in the first proviso to paragraph (f) must be read with the words immediately following, 'is available for the owner or the tenant'; and that 'other accommodation' must be distinguished from 'suitable alternative accommodation' to be found in paragraph (n). When the landlord bases his claim on paragraph (f) it is misleading for the tenant to raise in his defence the different provisions of another paragraph in which the requirements to be satisfied by the landlord are much more stringent."

Taking all the evidence into consideration, in my opinion the defendant has not discharged the onus which lies on him on the question of hardship. As I have said above, having regard to all the circumstances of the case, greater hardship will be caused by refusing the order for possession to the plaintiffs. However, this is a case in which the defendant should be given time to find other accommodation for himself. The order will therefore be that the defendant do deliver vacant possession of the ground floor of the premises on or before 31st December, 1963, and that he do pay all the rent due and accruing up to that date. The costs will follow the event.

*Order accordingly.*

Solicitors:—*Lovelace & Hastings*; *Skrine & Co.*

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## RAJA MOHAMED v. REGINA

**[A.Cr.J. (Ambrose J.) August 17, 1963]**

**[Singapore — Magistrate's Appeal No. 239 of 1962]**

*Penal Code ss.378 and 381—Theft—Dishonest intention—Not necessary to move property out of possession.*

To constitute theft there must be an intention to take dishonestly any movable property out of the possession of another person without that person's consent. It is sufficient if the person who has formed such dishonest intention moves that property in order to such taking; and it is not necessary for him to move that property out of the possession of the other person.

MAGISTRATE'S APPEAL.

*R. Murugason* for the appellant.

*S. R. Chapkhana* (Deputy Public Prosecutor) for the respondent.

*Cur. Adv. Vult.*

**Ambrose J.:** In this case the appellant, who was a chemical mixer employed by the Singapore Glass Manufacturers Co. Ltd., was charged with theft of property in the possession of his employer under section 381 of the Penal Code. It was alleged that on the 15th October, 1962, at about 7.45 p.m. at the Company's premises at Henderson Road, Singapore, he committed theft in respect of two dozen drinking glasses valued at $2 in the possession of the Company. He was convicted by the trial Magistrate and sentenced to one day's imprisonment and a fine of $300.

It was submitted on behalf of the appellant that, though the Magistrate found that the two dozen glasses were removed by him from the

store on the ground floor of the Company's premises to a box on the first floor, it was not proved that they had been removed out of the possession of the Company. I concede that to constitute theft there must be an intention to take dishonestly any movable property out of the possession of another person without that person's consent. But in my judgment, it is sufficient if the person who has formed such dishonest intention moves that property in order to such taking; and it is not necessary for him to move that property out of the possession of the other person. This is clear from section 378 of the Penal Code which reads:

"Whoever, intending to take dishonestly any movable property out of the possession of any person without that person's consent, moves that property in order to such taking, is said to commit theft."

I accordingly find no substance in the first submission.

The second submission was that the act of the appellant amounted merely to preparation and not even to an attempt to commit theft. I find no substance in this point. The requisite dishonest intention was established beyond reasonable doubt. The offence of theft was committed as soon as the accused moved the property in order to the dishonest taking. This is clear from section 378.

For these reasons I dismiss the appeal and affirm the conviction and sentence.

*Appeal dismissed.*

Solicitors:—*Murugason & Co.*

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## A. MOHAMED SHARIFF & CO. LTD. v. MOHAMED HUSSAIN

**[O.C.J. (Winslow J.) August 19, 1963]**

**[Singapore — Suit No. 1181 of 1963]**

*Bankruptcy and insolvency—Offer of composition to creditors—Acceptance of offer by all creditors—Subsequent refusal by one creditor to accept amount under the offer of composition—Claim for full sum due—Whether creditor precluded from claiming full sum.*

The defendant made an offer of composition to all his creditors at a meeting including the duly authorised representative of the plaintiffs and his offer of composition was accepted by all the creditors. Subsequently, the plaintiff company refused a cheque for the amount due under the composition and filed a claim for the full sum due.

**Held:** (1) a creditor cannot bring an action for the full debt where other creditors have been induced to join him in a composition with the debtor under such circumstances that each party gives the rest reason to believe that in consequence of the agreement to the composition his demand for the full debt will not be enforced. This, in fact, amounts to a new agreement, substituted for the original contract with the debtor, the consideration to each creditor being the engagement of the others not to press their individual claims; *Good* v. *Cheeseman*(1) followed;

(2) the fact that such a composition agreement was verbally made was no bar because such a composition agreement may be made verbally or in writing or partly in writing and partly verbally.

*Case referred to:—*

(1) *Good* v. *Cheeseman* 109 E.R. 1167.

ACTION.

*Edwin D'Souza* for the plaintiff.

*A. Muthuswamy* for the defendant.

*Cur. Adv. Vult.*

**Winslow J.:** The plaintiff claims a sum of $4,314.79 in respect of goods sold and delivered to the defendant. It is not disputed by the defendant, however, that such a sum was in fact outstanding prior to the month of October 1961 when, according to the defendant, an offer of composition was made by him to pay off all his creditors rateably out of the proceeds of a "closing down sale" of his stock-in-trade as he was unable to pay all his debts in full. This offer, according to the defendant, was accepted by all the creditors present, including the plaintiff, at a creditors' meeting held on 18th October, 1961. In due course the closing-down sale netted $19,031.65 which was able to yield a dividend of nearly 40 per cent to each of such creditors. The plaintiff however refused to collect a cheque for the amount due to him. All the others present at the meeting however collected the amounts due to them under this arrangement.

It is significant that at this meeting of the creditors an offer by the plaintiff company represented by Mohamed Shariff, a director of the company, to purchase the entire stock-in-trade of the defendant for 30 per cent of the total value of the debts due to all creditors and to keep the excess over and above this amount for himself was rejected. An alternative proposal was put forward by P. R. Sachdev, D.W.1. the largest creditor, that he would collect the proceeds of sale daily from the defendant and make distribution rateably amongst all creditors on completion of the "closing-down sale". This was put to the creditors present and accepted. The plaintiff remained at the meeting throughout but made no protest.

As against this version of what took place at the meeting of creditors, Mohamed Shariff, representing the plaintiff company, stated that he did not accept this offer of composition and that he walked out of the meeting when his own offer had been rejected. He further stated that he had, in fact, had a private arrangement with the defendant before the meeting whereby the defendant offered to pay him his debt in full. He